

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF PROVIDENCE

:
:
:

v.

**C.A. No. T14-0025
07409113103**

CAROLYN GAMBLE-RIVERS

:

DECISION

PER CURIAM: Before this panel on August 20, 2014—Judge Parker (Chair), Magistrate DiSandro III, and Magistrate Noonan, sitting—is Carolyn Gamble-Rivers' (Appellant) appeal from a decision of Magistrate Abbate sustaining the charged violations of G.L. 1956 § 31-28-7, Handicap Parking Violation and Wrongful Use. Appellant appeared before this panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On January 17, 2014, at approximately 12:05 in the morning, the Appellant was issued a citation by Officer Noel Field (hereinafter, "Officer Field") of the Providence Police Department for violating section 31-28-7, "Motor vehicle plates for persons with disabilities – Entitlement – Designated parking spaces – Violations." The Appellant's arraignment was scheduled for February 18, 2014. At the arraignment, the Appellant pled not guilty, and a trial was scheduled for April 15, 2014.

At the trial, Officer Field testified that on the day in question, he was on patrol in downtown Providence when he observed a black Nissan with Rhode Island registration 815938 parked in a handicap space on Dorrance Street. (Tr. at 3.) After investigating the vehicle, Officer Field observed handicap placard 120988, which belonged to Judith Mullervy and expired on August 31, 2013. Id. As a result, Officer Field issued summons

number 07-409-113103 to the owner of the vehicle, Carolyn Gamble-Rivers for a handicap parking violation and for wrongful use of handicap placard 120988. Id.

Afterwards, the Appellant testified that she had her own handicap placard, which was valid at the time of the citation. (Tr. at 5.) Therefore, she had no reason to use another person's handicap placard. Id. Furthermore, Appellant testified that she does not know Judith Mullervy, the owner of the expired placard. (Tr. at 7.)

After reviewing the testimony presented, the trial magistrate found Officer Field's testimony credible. (Tr. at 7.) As such, the trial magistrate sustained the violations of section 31-28-7. Aggrieved by the trial magistrate's decision to sustain the charges, Appellant timely filed the instant appeal.

Standard of Review

Pursuant to G.L. 1956 § 31-41.1-8(f), the appeals panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

"The appeals panel shall not substitute its judgment for that of the judge or magistrate on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, may remand the case for further proceedings, or may reverse or modify the decision if the substantial rights of the appellant have been prejudiced because the judge's findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the judge or magistrate;
- (3) Made following unlawful procedure;
- (4) Affected by another error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

In reviewing a hearing judge or magistrate's decision pursuant to § 31-41.1-8, this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact." Link v. State, 633 A.2d 1345, 1348 (R.I. 1993) (citing Liberty Mutual Ins. Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). The appeals panel is limited to a determination of whether the hearing justice's decision is supported by competent evidence. Marran v. State, 672 A.2d 875, 876 (R.I. 1996) (citing Link, 633 A.2d at 1348). "In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision." Link, 633 A.2d at 1348. Otherwise, it must affirm the hearing judge's [or magistrate's] conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

Appellant argues that the trial magistrate's decision is clearly erroneous in light of the reliable, probative, and substantial evidence on the record. Specifically, the Appellant contends that she has her own handicap placard. Additionally, she does not know the owner of the placard the officer cited her for using.

In Link, our Supreme Court made clear that this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing [magistrate] concerning the weight of the evidence on questions of fact." Link, 633 A.2d at 1348 (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). As the members of this Panel did not have an opportunity to view the live trial testimony of the Officer or Appellant, it would be impermissible to second-guess the trial magistrate's

“impressions as he . . . observe[d] [the Officer and Appellant] [,] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[.]” Environmental Scientific Corp., 621 A.2d at 206.

After listening to the testimony presented at trial, the trial magistrate acknowledged that Appellant testified that she had her own handicap placard. See Tr. at 5. However, the trial magistrate determined that the Officer’s testimony was not only credible, but the testimony was also sufficient to sustain the charged violation. See Tr. at 7-8. “[The appellate court] [is] not privileged to assess the credibility of witnesses and may not substitute our judgment for that of the trial [judge] concerning the weight of the evidence on questions of fact.” Environmental Scientific Corp., 621 A.2d at 208 (quoting Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). Here, the trial magistrate considered the testimony of Officer Field and the testimony of the Appellant. See Tr. at 7-8. After hearing all of the testimony presented at the trial, the trial magistrate found Officer Field’s testimony more credible than that of the Appellant. (Tr. at 7.) Therefore, pursuant to the holding in Link, this Panel is unable to revisit the credibility findings made by the trial magistrate. 633 A.2d at 1348.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial magistrate's decision was supported by the reliable, probative, and substantial evidence of record. This Panel is also satisfied that the trial magistrate's decision was not affected by error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied.

ENTERED:

Judge Edward C. Parker (Chair)

Magistrate Domenic A. DiSandro, III

Magistrate William T. Noonan

DATE: _____